

## **Exhibit C**

### **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007 by and among **MUSEUM PLAZA LLC**, a Kentucky limited liability company, with its principal office at 710 West Main Street, Suite 201, Louisville, Kentucky 40202 ("Developer"), **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** ("City") acting by and through its Economic Development Department, 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202, **PARKING AUTHORITY OF RIVER CITY, INC.**, a Kentucky non-profit corporation, with its principal office at 517 South Fourth Street, Louisville, Kentucky 40202 ("PARC"), **METRO DEVELOPMENT AUTHORITY, INC.**, a Kentucky non-profit, non-stock corporation with its principal address located at 444 South Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Authority") and the **URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE**, a public entity, with its principal office at 745 W. Main Street, Louisville, Kentucky 40202 ("Urban Renewal").

### **W I T N E S S E T H:**

**WHEREAS**, PARC owns and controls certain property (i) located at 615 to 621 West Main Street (the "West Main Street Property"), and (ii) located north of Washington Street, east of Eighth Street, south of River Road, and west of the public plaza (the "Ali Plaza") adjacent to the Muhammad Ali Center (the "Old Kingfish Site"), as more particularly described and mapped on Exhibit A collectively referred to as the "PARC Properties".

**WHEREAS**, the City owns and controls certain property (i) located at the Northwest corner of Seventh and Main Streets ("Fort Nelson Park") and (ii) located north of Washington Street between 7<sup>th</sup> and 8<sup>th</sup> Streets ("Parking Lot Property"), referred to collectively as the "City Properties", all as more particularly described in and mapped on Exhibit A; and

**WHEREAS**, Urban Renewal owns and controls certain property located north of Washington Street between 7th and 8th Streets on which a parking lot and a high-voltage transmission tower is located, referred to as the "Urban Renewal Property", all as more particularly described and mapped on Exhibit A; and

**WHEREAS**, the Developer desires to construct on the PARC Properties, the City Properties, the Urban Renewal Property and other property it has acquired and properties adjoining or nearby upon which related and associated infrastructure improvements will be made (the "Project Site") a new contemporary art museum, luxury hotel, residential condominiums, Class A office space, retail and restaurant outlets, a parking garage and a public plaza, all commonly referred to as Museum Plaza ("Project"); and

**WHEREAS**, the City has determined that the Project will enhance the redevelopment of Louisville Metro, add unique cultural offerings downtown, increase tourism, create jobs and generate additional tax revenues for the City; and

**WHEREAS**, in order to undertake the Project, the Developer has requested that the City, PARC, Urban Renewal and the Authority participate as part of a public/private partnership; and

**WHEREAS**, the City, PARC, Urban Renewal and the Authority agree to assist the Developer in connection with the Project in accordance with the terms and conditions of this Agreement because of the benefits which will be derived by the City and the community from the Project; and

**WHEREAS**, by Ordinance No 154, Series 2007 enacted on August 13, 2007, (“Ordinance 154”) and as amended by Ordinance No \_\_\_, Series 2007 enacted on December \_\_\_, 2007 (“Ordinance \_\_\_”), the City has designated the Project Site as within a development area as more particularly shown on Exhibit B attached hereto and as may be further amended by the City (the "Development Area") pursuant to KRS 65.7041 to KRS 65.7083 (the "TIF Law"); and

**WHEREAS**, the TIF Law authorizes the Commonwealth of Kentucky (“State”) and a local taxing authority to release certain incremental taxes generated within a development area to an Agency (as defined in the TIF Law) to be used for a project in a development area; and

**WHEREAS**, the City in Ordinance 154 designated the Authority as the Agency under the TIF Law for the Project; and

**WHEREAS**, the Authority and the State have entered into a project grant agreement dated October 30, 2007 (the "Grant Agreement") and the Authority and the City have entered into a local participation agreement dated August 20, 2007 (“Local Participation Agreement”) pursuant to which the State agreed to make available for the benefit of the Project 80% of the incremental taxes generated within the Development Area and the City agreed to make available for the benefit of the Project 90% of the incremental taxes generated within the Development Area, both pursuant to the TIF Law and the terms and conditions of this Agreement, the Grant Agreement and the Local Participation Agreement (the “Released Amount”); and

**WHEREAS**, to maximize the benefits available to the Project, the City and the Authority desire to use the Released Amount to assist with the financing of the Project as provided in this Agreement; and

**WHEREAS**, to maximize the benefits available to the Project, the City desires to issue up to \$130 million of tax-exempt bonds which shall be non-recourse to the City and shall only be repaid with proceeds of the Released Amount (the “Bonds”); and

**WHEREAS**, to maximize the benefits available to the Project, the City shall contribute to the Project \$45 million (the “City Investment”), all or a portion of which may be repaid with proceeds of the Released Amount after servicing the Bonds’ principal and interest payments; and

**[NOTE: Need to clarify structural form of this]**

**WHEREAS**, to maximize the benefits available to the Project, an affiliate of the Developer shall loan money to the Developer (the “Developer Infrastructure Loan”) in connection with Approved Public Infrastructure Costs and Signature Project Costs (both terms as defined in the Grant Agreement), all or a portion of which may be repaid with proceeds of the Released Amount after servicing the Bonds’ principal and interest payments; and

**WHEREAS**, the net proceeds of the Bonds, City Investment and Developer Infrastructure Loan shall be used for Approved Public Infrastructure Costs and Signature Project Costs;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

## **ARTICLE I**

### **COVENANTS AND UNDERTAKINGS OF DEVELOPER**

**Section 1.01. Project Construction.** The Developer shall procure the financing for and construct the Project upon the Project Site, adjoining public ways, and elsewhere in the

Development Area, consistent with the Preliminary Project Plans approved by the City and upon the acquisition of all necessary permits and approvals in accordance with this Agreement.

**Section 1.02. Project Description.** The Project shall at a minimum consist of the following elements:

A. A multi use building of no fewer than 50 floors, substantially in the form illustrated on Exhibit C attached hereto, containing the following:

- 1) a full-service, nationally-flagged, upscale hotel with at least 225 rooms;
- 2) at least 200,000 square feet of Class A office space;
- 3) at least 150 residential condominiums;
- 4) a 20,000 or larger square feet contemporary art center; and
- 5) restaurants and retail outlets;

B. A parking garage with at least 700 spaces;

C. A public plaza on top of a portion of the Project's parking garage, which connects to Main Street by substantially renovating Fort Nelson Park and which connects to the Ali Plaza (the "MP Park");

D. The renovation of the existing Main Street facades and the construction of an in-fill, mixed-use building on the West Main Street Property;

E. Public access through a portion of the West Main Street Property from Main Street, over a bridge spanning Washington Street, to the Ali Plaza, which pedestrian connection shall be maintained by Developer or an assignee at its sole expense and which shall be open to the public daily pursuant to a reasonable schedule promulgated by Developer with input from the City;

F. Expansion of 8<sup>th</sup> Street north to River Road;

G. Expansion of River Road west to 8<sup>th</sup> Street; and

H. A pedestrian bridge over 6<sup>th</sup> Street connecting the Ali Plaza and the Belvedere.

I. Streetscape improvements on \_\_\_\_\_

The Project is estimated to cost no less than \$400 million to complete.

**Section 1.03. Project Schedule and Construction.** The Developer acknowledges that time is of the essence and agrees to adhere to the schedule set forth in Subsection B of this Section (the "Schedule").

A. Notwithstanding anything to the contrary in this Section 1.03, the City recognizes that the Developer needs to acquire permits from the Army Corps of Engineers, Kentucky Airport Zoning Commission, Federal Aviation Administration, State Department of Transportation, Federal Highway Works Administration, and others. The City further recognizes that approval of these permits is contingent upon factors outside of the control of the City and the Developer. The City agrees to use commercially reasonable efforts to assist the Developer to obtain whatever permits and approvals are necessary from such agencies to permit the Project to proceed without a substantial change to the Schedule or the Project's budget.

B. The Developer shall use its best efforts to construct the Project in accordance with the following schedule and to meet the milestone dates set forth herein:

<u>Milestone</u>	<u>Date</u>
1) Obtain all permits required to commence construction	November 1, 2007
2) Commence construction of Project	November 1, 2007
3) Permanently close 7 <sup>th</sup> Street	September 30, 2009
4) Substantial completion of Building	September 30, 2011
5) Substantial completion of Plaza	December 30, 2011
6) Substantial completion of West Main Buildings and Connector to Ali Plaza	September 30, 2011
7) Opening of expanded 8 <sup>th</sup> Street and River Road	December 30, 2011
8) Substantial completion of 6 <sup>th</sup> Street Pedestrian Bridge	
9) Substantial completion of Streetscape Improvements	December 30, 2011

C. Any provision of this Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of force majeure as provided in Section 4.05, obtaining necessary government permits, obtaining other required approvals, or any other cause which Developer and City agree is justifiable, a milestone date may be reasonably extended by the City. For all other reasons, the Developer shall obtain the prior written approval of the City for any substantial amendment to the Schedule, which approval shall not be unreasonably withheld.

D. Subject to the terms and conditions hereinafter set forth, the Developer shall cause the construction of the Project to be substantially in accordance with the Project plans approved by the City pursuant to Section 1.04 ("Preliminary Project Plans") and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations. At any time, upon thirty (30) days' prior written notice from the Developer to the City, the Developer may request the City to consider any significant and material changes to the Preliminary Project Plan; the City agrees to consider any such changes in good faith consistent with the terms and goals of this Agreement.

E Developer shall ensure that all construction is in a good and workman-like manner.

F. The City, its agents and employees, shall be granted a right of entry upon the Project Site and into the Project at reasonable times upon 24 hours notice during construction of the Project to enable the City to inspect construction of the Project through the course of construction, although the City shall have no obligation to do so.

G. Developer shall pay wages equal to or greater than the community's prevailing wages (as applicable to each trade) to all workers working for contractors providing services

under the direct supervision of the Developer's construction manager in connection with the construction of the Project and shall make its best efforts to include the participation of at least 15% minority-owned businesses, 5% women-owned businesses and 0.5% disabled person-owned businesses in the construction of the Project (including the procurement of material).

H. Developer shall work in good faith with the Muhammad Ali Center ("MAC") and PARC to maximize the synergies of each party's project and minimize any disruptions or negative impacts on the MAC and the adjacent PARC garage ("Ali Garage"), including, for example, providing advance notice to MAC and PARC of the Project's construction activities and regularly consulting with MAC, PARC and the Downtown Development Corporation on planning and construction matters.

In the event Developer interferes with operations of the Ali Garage unreasonably beyond the impact expected by the construction plan and schedule provided to the City, PARC and MAC, PARC shall give Developer immediate notification thereof, in writing, and Developer shall cease and desist such interference as soon as reasonably possible. It is recognized that when Developer closes 7<sup>th</sup> Street north of Main Street and portions of Washington Street vehicles will not be able to enter or exit the Ali Garage using its west entrance. During the time that Developer's work causes the closure of the west entrance to the Ali Garage, Developer agrees to: (i) reimburse PARC for the costs of up to two (2) traffic control flaggers to regulate and direct traffic exiting the north-easternmost and south-easternmost entrance to the Muhammad Ali Center; and (ii) reimburse PARC for the costs of one (1) additional ticket taker during peak hours.

I. In connection with the Developer's acquisition of land for a portion of the Project that is for infrastructure, within 30 days following the receipt of the Bond proceeds by the



Developer (unless prohibited by the terms of the Bonds for a reasonable period of time), Developer agrees to pay to the Louisville Science Center (“Center”) on behalf of the City and PARC \$1.5 million to compensate the Center for the loss of the surface parking lot located on the Parking Lot Property which is used by the Center for visitor and employee parking.

**Section 1.04. Design and Approval of the Project.**

A. Developer shall cause the Preliminary Project Plans to be prepared for the Project and shall submit such plans to the City’s Director of the Economic Development Department, who shall act as the City’s designated agent (“City Agent”), for review. The Preliminary Project Plans shall be sufficient in detail to enable City Agent to determine whether the design of the Project, including the size, scope and exterior of the Project and pedestrian and vehicular circulation, is consistent with good architectural practice that enhances the surrounding urban context and appropriate urban design principles. City Agent shall review the Preliminary Project Plans and provide any comments thereon to Developer in writing within thirty (30) days after receipt thereof. Failure to provide comments within such period shall constitute approval by City Agent of the Preliminary Project Plans.

B. The parties acknowledge that Developer has obtained from the City Agent conditional approval of the Preliminary Project Plans and has received category 3 approval from the Development Review Committee of the Louisville and Jefferson County Planning Commission, tentative approval from the Downtown Development Review Overlay District Committee (“DDRC”) and tentative approval from the West Main Architectural Review Committee (“WMARC”). Developer agrees to obtain from the City Agent final approval of the Preliminary Project Plans prior to obtaining final approvals from the DDROC and the WMARC.

C. Developer shall proceed expeditiously to complete construction plans and specifications to a level adequate to obtain all permits and approvals necessary to complete construction of the Project. Such plans and specifications shall be materially consistent with the approved Preliminary Project Plans and the approvals obtained pursuant to Subsection B of this Section. City, PARC and Urban Renewal agree to provide reasonable assistance to Developer to obtain such permits and approvals.

D. Developer shall, upon request and for informational purposes only, make available during regular business hours to City Agent a set of construction plans and specifications for the construction work that it is performing in connection with the Project.

E. City, PARC and Urban Renewal agree to provide all reasonable consents, as property owners, requested by Developer in connection with its permitting and approval of the Project.

**Section 1.05. Codes.** The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations, nothing herein notwithstanding.

**Section 1.06. Employment Regulations; Affirmative Action.** Developer, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national origin, sexual orientation or disability. At all times during the construction of the Project, Developer shall take reasonable steps to insure that its employees and the employees of its contractors and subcontractors are treated during employment, without regard to their sex, race, creed, color and national origin. This requirement shall apply to, but not be limited to, the following: employment, promotion,

demotion and transfer; recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training.

**Section 1.07. Non-Discrimination.** Upon completion of the Project, Developer agrees to abide by all fair housing laws and will not discriminate on the basis of race, sex, color, creed, disability, sexual orientation or national origin, in the sale, lease, rental, use or occupancy of the residential and commercial units.

**Section 1.08. Insurance.** Developer intends to put in place an Owner Controlled Insurance Program (“OCIP”). Developer shall submit the terms of the OCIP to the City's Risk Management Department for approval, which shall not be unreasonably withheld.

**Section 1.09. Security.** Developer agrees to furnish reasonable and customary security for the construction work site, or sites, located on the Project Site during construction of the Project.

**Section 1.10. Indemnification.** Except as may otherwise be provided herein, Developer agrees to indemnify City, PARC and Urban Renewal against any claim or filing of any lien on any part of the Project as a result of Developer's construction thereof and shall hold City, PARC and Urban Renewal harmless from any and all such claims or clients. Developer agrees to hold the City, PARC, Urban Renewal, the Authority, their officers, employees and agents harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable attorneys' fees) imposed upon or incurred by the City, PARC, Urban Renewal or the Authority as a result of or in connection with any of the following:

A. Any material misrepresentation or breach of warranty made by Developer in this Agreement or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

B. The breach of or default in the performance of any covenant, agreement or obligation to be performed by Developer pursuant to this Agreement or any agreement or instrument executed by it in connection herewith or pursuant hereto.

C. Any claim, damage, loss or expense attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom, unless caused by the grossly negligent act or omission or intentional misconduct of the City, PARC, Urban Renewal, the Authority or their employees acting within the scope of their employment.

**Section 1.11. Additional Representations and Covenants of Developer.** Developer represents and covenants as follows:

A. Developer is a Kentucky limited liability company duly formed and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Agreement.

B. Developer is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.

C. The execution of this Agreement and the construction of the Project by Developer will not knowingly violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Developer.

D. Developer, in this Agreement and in any schedule, exhibit, document or certificate delivered in accordance with the terms hereof, has not made any untrue statements of a material fact or failed to state a material fact.

E. There are no undisclosed actions, suits or proceedings pending or threatened against Developer which would, if adversely determined, have a material affect on Developer's ability to enter into this Agreement or construct the Project in accordance with this Agreement.

**Section 1.12. Environmental Testing, Remediation and Indemnification.**

A. Developer, at its expense, shall be solely responsible for performing any testing, assessments or other examinations ("Environmental Testing") to determine whether Hazardous Materials (as defined below) are present in, on, or under the Project Site and to conduct any remedial measures or management of the Hazardous Materials disclosed by the Environmental Testing as may be required by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet or other local or federal agency. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any applicable federal, state or local governmental agency or authority. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iv) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recover Act (31 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601), or (vi) defined as a "pollutant" or "contaminant" pursuant to Section 101(33) of the CERCLA.

**B.** Developer agrees to indemnify and hold harmless the City, Urban Renewal and PARC, their officers, employees, agents and representatives, successors and assigns from and against any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs, fines, penalties and expenses of every kind and nature (including, but not limited to reasonable attorneys' fees), resulting from, arising out of or related to

(1) its performance of the Environmental Testing or conducting any remedial measures or management of Hazardous Material pursuant to Subsection A of this Section or

(2) claims of any kind whatsoever hereafter made, incurred or asserted against the City, Urban Renewal or PARC by any person or entity, including without limitation any private or governmental entity, relating to or arising out of or resulting from (i) soil, groundwater or other conditions at the PARC Properties, Urban Renewal Property or the City Properties or failure of the PARC Properties, Urban Renewal Property or the City Properties to comply with any requirement of a risk management plan, or (ii) the presence in, on, under or about the PARC Properties, Urban Renewal Property or the City Properties of any Hazardous Material or the existence or release or threatened release or migration, of any Hazardous Material on, under about or from the PARC Properties, Urban Renewal Property or the City Properties, or (iii) any transportation, disposal, removal, spillage, leakage, response on, under, about or from the PARC Properties, Urban Renewal Property or the City Properties, of any Hazardous Material.

**Section 1.13.** Developer acknowledges that the Local Participation Agreement and the Grant Agreement entered into by the Authority for the Project pursuant to the TIF Law requires the Authority to require businesses and persons within the Development Area to obtain separate tax ID numbers and report information concerning taxes paid. The City has enacted Louisville Metro Codified Ordinance Section 110.002 (G) which mandates businesses to obtain separate tax

ID numbers for reporting Louisville Metro's occupational license fees. The parties acknowledge however that it shall be the obligation of the Developer to insure compliance with the above agreements and ordinance. Therefore Developer agrees to use its best efforts to require all tenants, purchasers, residents, businesses, employers, employees, contractors and subcontractors of the Project to obtain separate tax identification numbers for all state and local taxes paid by them for activities occurring within the Development Area and to report all required information concerning taxes paid or collected, including but not limited to:

1. require all contractors and subcontractors during work on the Project to report to the Authority all wages, state income tax withholdings and local occupational license fee withholdings of employees doing work within the Development Area;
2. require all corporations, sole proprietorships, independent contractors or limited liability companies leasing space within the Project to report to the Authority (i) wages, state income tax withholdings and occupational license fee withholdings of its employees attributable to work performed within the Development Area, (ii) corporate income taxes paid, and (iii) limited liability entities taxes paid;
3. require any person who purchases a residential unit in the Project who, prior to moving to such residential unit, was not a resident of Kentucky to provide a copy of their Kentucky Income Tax Returns to the Authority; and

4. require any business leasing space in the project which makes retail sales to consumers to report all sales taxes collected on such retail sales.

**Section 1.14.** For so long as Developer or an affiliate thereof owns, controls or is under contract to manage the Ali Plaza, Developer agrees to maintain, or cause to be maintained, the MP Park at a level consistent with that of the Ali Plaza.

**Section 1.15.** Developer and/or certain of its members or managers shall guarantee completion of the Project (including the infrastructure) in a form consistent with the Preliminary Project Plans.

**Section 1.16.**

(a) Upon the sale of the real property associated with the hotel portion of the Project by Developer to an unrelated third party, Developer shall pay PARC \$550,000 as additional consideration for the PARC Properties.

(b) Upon the sale of the real property associated with the office portion of the Project by Developer to an unrelated third party, Developer shall pay PARC \$675,000 as additional consideration for the PARC Properties.

## **ARTICLE II**

### **COVENANTS AND OBLIGATIONS OF CITY, PARC, URBAN RENEWAL AND THE AUTHORITY**

**Section 2.01. Developer Covenant.** Developer covenants to City, PARC, Urban Renewal and the Authority that it would not enter into this Agreement to construct the Project but for the commitment of the City, PARC, Urban Renewal and the Authority to provide the



financial and other incentives to the Project as provided in this Agreement to induce Developer to undertake the Project pursuant to this Agreement.

**Section 2.02. City Obligations.** The City, in consideration of Developer's obligation to construct the Project in accordance with this Agreement, agrees to the following:

A. Transfer fee simple title to the City Properties to Developer by deed of special warranty and specifically clear of those known title defects listed on Exhibit D (attached hereto) (free and clear of all liens and encumbrances and restrictions of record) for \$1. Developer acknowledges that the deed to Fort Nelson Park restricts its use and Developer agrees to continue to use such property as a park and uses incidental thereto

B. [Intentionally left blank.]

C. Release to the Authority for the benefit of the Project ninety percent (90%) of all of the incremental tax revenues pursuant to the terms and conditions of the Local Participation Agreement attached hereto as Exhibit E.

D. Cooperate with the Developer and State to maximize the refund from the State to the Authority of any sales or use tax paid on the purchase of tangible personal property used in the construction of the Project pursuant to KRS 139.515 (the "Sales Tax Refund").

E. Grant to Developer a permit to use portions of the public ways abutting the Project Site as shown on Exhibit F attached hereto (including temporary sidewalk and road closures), during construction of and after the opening of the Project;

F. Permit Developer to make the following permanent changes to the City's roadways, subject to the final approval of the Director of Public Works and Assets:

(1) Remove the existing bridge over Seventh Street;

(2) Assist Developer to permanently close Seventh Street between Washington Street and River Road and partially close Washington Street (in order to relocate it) between 7<sup>th</sup> and 8<sup>th</sup> Streets pursuant to KRS 82.400-82.405 consistent with the Preliminary Project Plans and include such land as part of the City Properties transferred pursuant to Section 2.01(A)(1) of this Agreement;

(3) Dedicate portions of City owned property behind the Science Center and south of the floodwall to right of way in order to relocate Washington Street as illustrated on Exhibit G;

(4) Provide access to the Project parking garage over the common area located south of Washington Street and east of Eighth Street as shown on the plat attached hereto as Exhibit H;

(5) Grant to Developer an easement for that portion of the public park that is to be built on Ft. Nelson Park that encroaches into the Seventh Street right of way, and grant to Developer and the Louisville/Jefferson County Metropolitan Sewer District an easement for access, floodgate storage, storage and other general uses underneath the ramp to be constructed on Seventh Street;

G. Grant to Developer a permanent easement for the air rights over Sixth Street and any portion of the City Properties necessary to construct the pedestrian bridge over Sixth Street, as set forth in the Preliminary Project Plans.

H. Grant to Developer, to use as staging space during construction of the Project, a temporary construction easement over such land located to the west of 8<sup>th</sup> Street which is owned by the City and further described and mapped on Exhibit I, all in a manner consistent with the Preliminary Project Plans;

I. Grant to Developer a permanent easement for the air rights over Washington Street and the Ali Plaza necessary to construct the park ramp, diagonal transportation and pedestrian walkways described in the Preliminary Project Plans;

J. Permit the reconfiguration of Washington Street between Sixth and Eighth Streets consistent with the Preliminary Project Plans;

K. Assist Developer to obtain from the Metropolitan Sewer District approval to remove the flood wall gate storage facility currently located at Eighth and Washington Streets and allow its relocation under the Seventh Street ramp;

L. Make a good faith effort to work with the Commonwealth of Kentucky to extend River Road farther west and to work with the Federal Highway Works Administration to obtain all relevant and necessary approvals;

M. Grant all such other easement, licenses, or encroachments as may be necessary for the Project as such may arise during construction of the Project;

N. Issue up to \$130 million of the Bonds, which shall be tax-exempt bonds, non-recourse to the City, and only repaid with proceeds of the Released Amount pursuant to the terms of the Agreement, the Project Grant Agreement, the Local Participation Agreement, and Ordinance \_\_\_\_\_. The City agrees to facilitate the re-financing of the Bonds as soon as practical if such a refinancing can reduce the borrowing costs of the Bonds. The City agrees to consult with Developer regarding any such re-financing; and

O. Contribute the City Investment, which shall equal \$45 million and which shall only be spent on behalf of the Project after the members of the Developer have invested at least \$14 million of equity in the Project. The City shall be responsible for the issuance of any bonds which may be required to raise the capital necessary to make the City Investment; however, the

City agrees to make the City Investment no later than the Bonds are issued. The City acknowledges that proceeds of the City Investment may be used to repay that portion of bridge loans currently outstanding to the Developer which exclusively has been used to pay for Approved Public Infrastructure Costs and Approved Signature Project Costs.

**Section 2.03. PARC Obligations.** PARC, in consideration of Developer's obligation to construct the Project in accordance with this Agreement, agrees to the following:

A. Transfer fee simple title to the PARC Properties to Developer by deed of special warranty free and clear of all liens and encumbrances and restrictions of record and specifically clear of those known defects of title listed on Exhibit J (attached hereto) for \$1 plus those payment which may be made pursuant to Section 1.16;

B. Assist Developer to subdivide the PARC Property from the Ali Plaza property; and

C. Work with Developer to enter into a mutually acceptable cross-access agreement between the parking garage to be constructed on the Project and the Ali Garage to permit vehicular access from one garage to the other.

D. Reimburse to Developer \$1.75 million for documented costs related to improvements adjacent to or adjoining the garage located below the Ali Plaza operated by PARC including, but not limited to, the pedestrian bridge spanning Sixth Street, the connection between this PARC garage and the Project's garage, and a new opening in the flood wall created, in large party, to facilitate the flow of traffic out of this PARC garage. This reimbursement shall be made following the presentment by Developer to PARC and the City Agent of such documented expenses it has incurred.

**Section 2.04. Urban Renewal Obligations.** Urban Renewal, in consideration of Developer's obligation to construct the Project in accordance with this Agreement, agrees to transfer fee simple title to the Urban Renewal Property to Developer by deed of special warranty free and clear of all liens and encumbrances and restrictions of record and specifically clear of those known defects of title listed on Exhibit K (attached hereto) for \$1;

**Section 2.05. Authority Obligations.** The Authority, in consideration of Developer's obligation to construct the Project in accordance with this Agreement, agrees to the following:

A. Enter into the Local Participation Agreement with the City.

B. Enter into the Grant Agreement with the State.

C. Release to the City, the Developer or the Bond Trustee for the benefit of Project the Released Amounts received by the Authority from the State pursuant to the Grant Agreement and the Released Amounts from the City pursuant to the Local Participation Agreement in accordance with the terms of the TIF Law, this Agreement, the Grant Agreement and the Local Participation Agreement as follows:

(1) First, the Released Amount shall be used to annually fully pay all required principal and interest payments on the Bonds;

(2) Second, 80% of the Released Amount shall be used to repay the City an amount equal to the principal and interest on the City Investment, until such time that the principal of the City Investment has been fully repaid, after which the City shall not receive any of the Released Amount; and

(3) Third, but at the same time as C(2) above, 20% of the Released Amount shall be used to pay principal and interest on the Developer Infrastructure Loan and after such time that the payments in C(2) above are no longer made, 100% of the Released

Amount shall be used to pay principal and interest on the Developer Infrastructure Loan until such loan or loans have been fully repaid.

D. Release to Developer (or an affiliate designated in writing by Developer) all of the Sales Tax Refund received by the Authority from the State pursuant to the Grant Agreement.

E. Notify in writing the State of the Activation Date under the Grant Agreement following a written request from Developer.

**Section 2.06. Additional Representations and Covenants of the City, PARC Urban Renewal and the Authority.** The City, PARC, Urban Renewal and the Authority, as applicable, each represents and covenants as follows:

A. The City is a Kentucky consolidated local government possessing the requisite authority to enter into this Agreement.

B. PARC and the Authority are Kentucky non-profit, non-stock corporations possessing the requisite authority to enter into this Agreement.

C. Urban Renewal is a public entity established pursuant to KRS Chapter 99 possessing the requisite authority to enter into this Agreement.

D. Neither the City, PARC, Urban Renewal nor the Authority, in this Agreement nor any schedule, exhibit, document or certificate delivered in accordance with the terms hereof, has made any untrue statement of a material fact or failed to state a material fact.

E. The City and PARC agree they will make their best efforts to render assistance to Developer in assisting it to obtain the necessary governmental approvals for the Project.

F. The City agrees it will maintain, and intends to improve, the landscape, roadways and hardscape located to the north of the Project on and adjoining River Road and it will strive to maintain the Ali Plaza at a level consistent with the maintenance of the Waterfront Park.

G. Neither the City Properties, the Urban Renewal Property nor the PARC Properties are threatened or materially adversely affected in any way as a result of defects of title, earthquake, disaster, labor dispute, any action by the United States or any other governmental authority, riot, civil disturbance, uprising, activity of armed forces or act of God or enemy; provided, however, these conditions shall not include the threat of flooding, which can always be anticipated at the Project site.

### **ARTICLE III**

#### **PERFORMANCE CONDITIONS**

##### **Section 3.01. City's, PARC's, Urban Renewal's and Authority's Conditions.**

A. As determined by the City Agent in its reasonable discretion, neither the City, PARC, Urban Renewal nor the Authority shall be required to undertake their respective obligations provided in Article II, unless:

1. No Event of Default by Developer as set forth in Section 4.13 shall have occurred and remain uncured;
2. The Preliminary Project Plans shall have received final approval from the City Agent pursuant to Section 1.04;
3. Developer shall have obtained all permits required for the commencement of the Project's construction;

4. Developer shall have presented evidence reasonably satisfactory that it has equity financing or obtained a letter of intent with acceptable contingencies for a construction loan from one or more financial institutions (collectively, the "Construction Lender") sufficient to complete construction of the Project;

5. Developer shall have presented evidence that it has obtained a franchise or license commitment from a national hotel chain;

6. There shall be no undisclosed pending or threatened material litigation or regulatory enforcement action, which could or would prevent, limit or hinder Developer's capacity to undertake and complete the Project as required by this Agreement

7. Developer shall own or otherwise control all privately owned land within the Project Site.

8. The Board of Directors of PARC shall have approved the conveyance of the PARC Properties to Developer pursuant to the terms and conditions of this Agreement;

9. The Metro Council of the City shall have declared the City Properties as surplus and authorized their conveyance to Developer pursuant to the terms of this Agreement;

10. The Board of Commissioners of Urban Renewal shall have approved the conveyance of the Urban Renewal Property to Developer pursuant to the terms and conditions of this Agreement;

11. Metro Council shall have established the Development Area pursuant to the TIF Law;

12. The Authority and the Commonwealth of Kentucky shall have entered into the Grant Agreement;



13. The Authority and the City shall have entered into the Local Participation Agreement;

14. The City's Department of Public Works and Assets shall have provided its approval for any applicable street relocations and street closures set forth in the Preliminary Project Plans or as otherwise set forth in Section 2.02 above;

15. The PARC Properties shall have been appropriately subdivided so that only those portions necessary for the development of the Project shall be conveyed to the Developer pursuant to the terms hereof; and

16. The representations and warranties of Developer set forth herein shall be true and correct.

B. On behalf of the City, PARC, Urban Renewal and the Authority, the City Agent shall determine in its sole reasonable judgment that Developer has fully complied in all material respects with the conditions set forth in Subsection A of this Section 3.01, at which time City, PARC, Urban Renewal and the Authority shall each perform their respective obligations as provided in this Agreement; however, the requirements set forth in Section 3.01(A)(4) and (A)(14) above shall not be required prior to the City, PARC and Urban Renewal fulfilling their respective obligations set forth in Sections 2.02(A), 2.03(A) and 2.04, respectively. The City, PARC, and Urban Renewal agree to fulfill such obligations by transferring title to the designated property immediately following the execution of this Agreement and the compliance with the other provisions of Section 3.01(A); Developer agrees to transfer title of the properties back to the City, PARC and Urban Renewal, respectively, if the conditions of Sections 3.01(A)(4) and (A)(14) are not met prior to December 31, 2008.

**Section 3.02. Developer's Conditions.** Developer shall not be required to undertake the Project pursuant to this Agreement unless the following conditions have been met or waived by Developer prior to such closing:

A. The representations and warranties of the City, PARC, Urban Renewal and the Authority set forth herein shall be true and correct in all material respects;

B. Neither the City Properties, Urban Renewal Property nor the PARC Properties shall be threatened or materially adversely affected in any way as a result of earthquake, disaster, labor dispute, any actions of the United States or any other governmental authority, riot, civil disturbance, uprising, activity of armed forces or act of God or enemy; provided however, these conditions shall not include the threat of flooding, which can always be anticipated at the Project site;

C. Developer shall have obtained, at its sole expense, a title commitment from a title insurance company showing that the City Properties are owned by the City, the Urban Renewal Property is owned by Urban Renewal and the PARC Properties are owned by PARC in fee simple unencumbered, insurable, marketable title except for acceptable easements and restrictions of record, zoning regulations affecting the properties and such other exceptions reasonably acceptable to Developer and Developer's TIF bond and construction lenders;

D. The City, PARC, Urban Renewal and the Authority shall each have fulfilled its respective obligations set forth in this Agreement; and

E. Any and all other surveys, inspections or studies, including, but not limited to, environmental studies of the City Properties, Urban Renewal Property and the PARC Properties, shall be satisfactory to Developer.

#### **ARTICLE IV**

## MISCELLANEOUS

**Section 4.01. Governing Law.** This Agreement, the construction thereof and the rights and obligations of the parties hereunder, shall be governed in all respects by the laws of the Commonwealth of Kentucky.

**Section 4.02. Severability.** Each and every provision hereof, including Articles, Sections, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

**Section 4.03. Section Headings and Captions.** The section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

**Section 4.04. Time of the Essence; Mutual Extension; Diligent Performance.** Time shall be of the essence with respect to the duties and obligations imposed on the parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of the parties. With respect to any duty or obligation imposed on a party to this Agreement, unless a time is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance thereof.

**Section 4.05. Force Majeure.** In the event that Developer shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by Developer, failure of power, restrictive governmental laws or regulations, riots,

insurrection, war or the act, failure or default of the other parties, or any other cause beyond its control, then performance of such act shall be extended for a period equivalent to the period of such delay with the agreement of the City.

**Section 4.06. Notices.** Whenever a notice is required or permitted to be given to a party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail addressed to the parties, or to such other address as the receiving party shall have notified the sender, as follows:

If to Developer:	Museum Plaza LLC 710 West Main Street, Suite 201 Louisville, Kentucky 40202
cc:	Steve Poe Poe Companies LLC 200 South Fifth Street, Suite 200 North Louisville, KY 40202  Craig Greenberg 400 West Market Street, 32 <sup>nd</sup> Floor Louisville, Kentucky 40202
If to City or the Authority:	C. Bruce Traughber Economic Development Department 444 So. Fifth Street, Suite 600 Louisville, Kentucky 40202
cc:	J. David Morris Economic Development Department 444 S. Fifth Street, Suite 600 Louisville, Kentucky 40202
If to PARC:	Cathy Duncan PARC 517 S. 4 <sup>th</sup> Street Louisville, Kentucky 40202

If to Urban Renewal:

Urban Renewal and Community Development  
Agency of Louisville  
745 W. Main Street  
Louisville, Kentucky 40202  
Attn: Paul Mastrolia

In addition, in the case of any notice to Developer alleging or asserting an event of default by Developer, written notice also shall be provided to the Construction Lender and Bond Trustee, at the address provided by Developer to the other parties hereto.

**Section 4.08. Brokers and Finders; Fees and Expenses.** Each of the parties hereto represents and warrants to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each party indemnifies and holds the others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the

parties. Each party hereto indemnifies and holds the others harmless against any claims for fees for such services any person or firm claiming under or through such indemnitor.

**Section 4.09. Successors and Permitted Assigns for the Parties Hereto.** The covenants, terms and conditions contained in this Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto; however, prior to the completion of construction, without the prior written consent of the City, Developer shall not assign or transfer any interests under this Agreement to any party other than a party controlled by or owned by one or more individuals or entities who own or control Developer as of the date of this Agreement. Further, without the written prior consent of the City, Developer may transfer title to portions of the Property upon substantial completion of the Project and Developer may assign its rights under this Agreement conditionally or collaterally (with right of foreclosure) to any lender of funds to the Developer (or any of its affiliates) or the Project for the purpose of providing financing for the construction of the Project. The Developer further shall have the right to admit additional members, to alter or adjust the percentages of the existing members, or to change its form or structure (for example, to a corporation or other entity) so long as such entity is directly or indirectly owned and/or controlled by a majority of the current members of the Developer. The consent of the City shall not be unreasonably withheld for any proposed transfer pursuant to the previous sentence.

**Section 4.10. Estoppels.** Each of the parties hereto agrees to provide to the others, or to such third parties as may be reasonably requested by the others, written estoppels from time to time certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder (or, if defaults exist, specifying in detail the nature of such defaults), the

status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

**Section 4.11. No Third Party Beneficiaries; No Partnership or Joint Venture Created.** Each of the parties hereto agrees that nothing contained in this Agreement shall be deemed or construed by any of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship between each. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement. **[Potential Bond Trustee issue here??]**

**Section 4.12. No Abrogation of Legal Requirements.** Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

**Section 4.13. Default.**

A. Prior to the substantial completion of the Project, if Developer materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, or there has been a substantial decrease in Developer's capacity to complete the Project, the City, PARC, Urban Renewal or the Authority may give written notice (with a copy of said notice being given to all parties and the Construction Lender) that remedial action must be taken within sixty (60) calendar days. Developer shall correct such breach or default within sixty (60) days after Developer's receipt of such written notice. If the default is not reasonably curable within sixty (60) days after receipt of written notice from the City, PARC, Urban Renewal or the Authority, then Developer may continue to cure the default or breach so long as the City, PARC, Urban Renewal and the Authority are reasonably satisfied that sufficient progress is being made

toward a cure. If such action is not taken, the City, PARC, Urban Renewal and the Authority may terminate the Agreement by giving written notice to Developer at least ten (10) days prior to the effective date of termination.

In the event of any such termination, the City, PARC, Urban Renewal and the Authority shall be relieved of any executory obligations hereunder, the City shall be entitled to the undisbursed portions of the [BOND PROCEEDS?] (if the Project is not substantially complete at the time of such termination) and the City, PARC, Urban Renewal and the Authority shall be released from undertaking their respective obligations as provided in Article II of this Agreement, not provided as of that date and shall be entitled to any other remedy and damages available to them at law or in equity. **[Will need to be tweaked once financial arrangement set.]**

The City, PARC Urban Renewal and the Authority agree to accept performance under this Agreement by any Construction Lender which may acquire rights under or to this Agreement provided such Construction Lender agrees to enter into a Development Agreement with the City, PARC, Urban Renewal and the Authority containing substantially the same terms as this Agreement.

B. If the City, PARC, Urban Renewal or the Authority materially breaches or defaults on its respective obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice that remedial action must be taken within sixty (60) calendar days to the defaulting party and the other parties. The defaulting party shall correct such breach or default within sixty (60) days after the receipt of such written notice. However, if the default is not reasonably curable within sixty (60) days, the defaulting party may continue to cure the default or breach so long as Developer is satisfied that sufficient progress is being made



toward a cure. If such action is not taken, Developer may terminate the Agreement by giving written notice to all parties at least ten (10) days prior to the effective date of termination.

In the event of any such termination Developer shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity.

C. Notwithstanding any other provision of this Agreement, no party to this Agreement shall permit the withholding of any portion of the Released Amount pledged for the repayment of the Bonds, City Investment or Developer Infrastructure Loan for so long as such Bonds, City Investment or Developer Infrastructure Loan (including any or all which may be refinanced) are outstanding.

**Section 4.14. Binding Effect.** Each of the parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of the party is duly authorized by the party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms, and (iv) it is the intention of each of the parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

**Section 4.15. Provisions Not Merged with Deeds and Other Agreements.** This Agreement shall not terminate upon the execution of the deeds required by this Agreement, and the provisions of this Agreement shall not be deemed to be merged into such deeds.

**Section 4.16. Term.** The term of this Agreement shall be from the date hereof until the earliest of (i) the final payment of the Released Amounts pursuant to the Grant Agreement and

the Local Participation Agreement, or (ii) the termination of this Agreement in accordance with the terms hereof.

**Section 4.17. No Special Levy or Assessment.** The City commits to the Developer that the City will make no special levy or assessment (as distinguished from ordinary ad valorem taxes, levies or assessments uniformly applied throughout the downtown area in which the Project is located or any larger area) solely on or against the Project or its tenants for any cause whatsoever.

**Section 4.18. Defense of Litigation or Claims.** The City, PARC, Urban Renewal, the Authority and Developer shall each defend in its own name any challenge to this Agreement or to the participation of the parties in the Project, each at its own cost and expense.

**Section 4.19. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original copy hereof when duly executed by each party on one or more copies hereof but which together shall constitute one and the same instrument.

**[Remainder of Page Intentionally Left Blank.]**

**IN TESTIMONY WHEREOF**, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

Approved as to Form:

\_\_\_\_\_  
Jefferson County Attorney

**"CITY"**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

By: \_\_\_\_\_  
**Jerry E. Abramson**  
**Mayor**

**"DEVELOPER"**

**MUSEUM PLAZA LLC**

By: \_\_\_\_\_  
**Laura Lee Brown, Manager**

**"PARC"**

**PARKING AUTHORITY OF RIVER  
CITY, INC.**

By: \_\_\_\_\_  
**C. Bruce Traughber, President**

**"AUTHORITY"**

**METRO DEVELOPMENT  
AUTHORITY, INC.**

By: \_\_\_\_\_  
**C. Bruce Traughber, Chairman**  
Title: \_\_\_\_\_

**“URBAN RENEWAL”**

**URBAN RENEWAL AND  
COMMUNITY DEVELOPMENT  
AGENCY OF LOUISVILLE**

**By:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Title:**\_\_\_\_\_

## **Exhibits**

<b>A</b>	<b>=</b>	<b>Properties</b>
<b>B</b>	<b>=</b>	<b>Development Area</b>
<b>C</b>	<b>=</b>	<b>Rendering of Towers</b>
<b>D</b>	<b>=</b>	<b>City properties title defects</b>
<b>E</b>	<b>=</b>	<b>Local Participation Agreement</b>
<b>F</b>	<b>=</b>	<b>Portions of public ways to be closed</b>
<b>G</b>	<b>=</b>	<b>Relocated Washington St.</b>
<b>H</b>	<b>=</b>	<b>Access to parking garage</b>
<b>I</b>	<b>=</b>	<b>Temporary construction easement</b>
<b>J</b>	<b>=</b>	<b>PARC properties title defects</b>
<b>K</b>	<b>=</b>	<b>Urban Renewal Property title defects</b>

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